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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190200

DATE: March 15, 1978

MATTER OF: Praxis Assurance Venture

DIGEST:

Where, after bid opening, work scope is reduced, resolicitation is justified. Contention that agency should have negotiated changes in specifications after award rather than resolicit is without merit because reduction in work scope could have significant impact on outcome of competition.

Praxis Assurance Venture (Praxis) protests the cancellation, after opening, of invitation for bids (IFB) No. F04609-77-09026 for the repair and remodeling of 293 family housing units at George Air Force Base, California. The Air Force canceled the IFB after opening because of inadequate or deficient specifications and the failure of the IFB to include the per unit cost limitation required by Armed Services Procurement Regulation (ASPR) § 18-110(b) (1976 ed.). The Air Force also states that Praxis' bid was nonresponsive for failure to acknowledge a material amendment to the solicitation. In view of our disposition of the issue regarding the validity of the cancellation of the invitation, we consider the issues of the responsiveness of Praxis's bid and the applicability of ASPR § 18-110(b) as academic.

The Air Force insists that the specifications of the IFB no longer reflect the actual needs of the Government. In this regard, the Air Force initially reported that 4 changes were contemplated which would reduce the cost of the project by \$70,000. For example, the IFB called for waterproof disconnects and motor starts on evaporative coolers which, in fact, would not be required. The IFB showed the main sewer lines to be beneath the building slab. Actually, the

sewer lines would run from the exterior walls to the outside. Although the Air Force originally decided to require 6 inch masonry block walls instead of 8 inch masonry as required by the IFB, the masonry walls have been changed back to 8 inches. The Air Force now reports that 8 other changes will be made which will result in additional cost savings. The total estimated cost of the project, reflecting all of the changes contemplated by the Air Force, has been reduced by more than \$200,000. In short, it is clear that the original specifications overstated the needs of the Air Force.

Praxis asserts that cancellation of the original solicitation would be contrary to ASPR § 2-404.1(a) which provides:

"The preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsible bid, unless there is a compelling reason to reject all bids and cancel the invitation." (Emphasis added.)

Praxis argues that the specifications clearly represent the needs of the Government. Praxis asserts that the specifications are not ambiguous or inadequate and the changes contemplated by the Air Force are properly subject to contract changes and modifications after award. Urging that a reduction in the scope of work is not a reason for cancellation under ASPR, Praxis contends that the integrity of the bid system precludes cancellation here.

Generally, a reduction in the quantity in a given procurement may form the basis for the cancellation of an invitation for bids. See e.g., B-153229, February 5, 1964. Subsequent to the award of a Government contract, changes or modifications in the terms of the agreement may be required. However, the contracting parties may not employ a change in the terms of the contract so as to interfere with or defeat the purpose of a competitive procurement. E. R. Hitchcock & Associates, B-182650, March 5, 1975, 75-1 CPD 133. The competition to be

achieved in the award of Government contracts must be held to the work actually to be performed. Thus, a contracting officer may not award a contract competed for under a given specification with the intention to change to a different specification after award. A & J Manufacturing Company, 53 Comp. Gen. 838 (1974), 74-1 CPD 240. In this connection, we have stated:

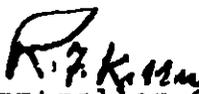
" * * * an attempt to negotiate with the low bidder changes amounting to a substantial deviation from the original specifications would be prejudicial to the other bidders submitting responsive bids * * * since the contract after negotiation would not be the same as that offered the other bidders under the invitation." B-174681, January 18, 1972.

The fact that the Air Force made eight additional changes after its initial determination to make modifications in only four of the specifications does not affect the propriety of the cancellation, because an agency may cancel no matter when the information precipitating cancellation first surfaces. See Edward B. Friel, Inc. et al, 55 Comp. Gen. 488, 490 (1975), 75-2 CPD 333. Moreover, we have sustained the cancellation of an invitation where after bid opening but prior to award it has been determined that the original specifications no longer serve the Government's actual needs. See 49 Comp. Gen. 211 (1969), Cottrell Engineering Corporation, B-183795, September 22, 1975, 75-2 CPD 165. In the instant case, the decision made after opening to effect material changes in design indicates that the agency's actual needs were not accurately expressed in the invitation. There is no requirement that an agency purchase more than its actual requirements. See B-150804, March 19, 1963, B-143767, January 24, 1961.

In summation, when it is determined that an invitation for bids contains specifications which overstate or misstate the minimum needs of the procuring agency, or the agency decides after opening that the needs of the Government can be satisfied by a less expensive design differing from that on which bids were invited, the best interest of the Government requires cancellation of the invitation. See B-164520, September 24, 1968.

It is true that the \$200,000 estimated reduction in cost is relatively small compared to the protester's total evaluated bid of \$3,883,000. We note, however, that the next low bid was \$4,020,000, and the Government funding limitation for the entire project was \$4,045,319. Therefore, the reduction in work scope could have a significant impact on the outcome of the competition. Under the circumstances we consider the magnitude of the changes to be significant.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States